

**TITLE 21**  
**OF THE**  
**SAN JOSE MUNICIPAL CODE**

# **ENVIRONMENTAL CLEARANCE**

**Chapter 21.04: GENERAL PROVISIONS AND PROCEDURES**

**Part 1: GENERAL PROVISIONS**

Sections:

21.04.010	Adoption by reference.
21.04.020	Construction.
21.04.030	Disclosure.

**21.04.010      Adoption by reference.**

A.      This title incorporates by reference and adopts the objectives, criteria and procedures for environmental review contained in the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq. and the CEQA Guidelines.

B.      This title merely implements the provisions of CEQA and the CEQA Guidelines. To the extent there is any conflict between this title and CEQA or the CEQA Guidelines, the provisions of CEQA and the CEQA Guidelines shall prevail.  
(Ord. 24551.)

**21.04.020      Construction.**

For purposes of interpreting and implementing this title, CEQA or the CEQA Guidelines, the city shall constitute a “local agency” and a “public agency” as these terms are used in the CEQA Guidelines, whenever these terms are reasonably applicable to the city in the given circumstances.  
(Ord. 24551.)

**21.04.030      Disclosure.**

A.      In order to achieve maximum objectivity in the environmental clearance process, all applications for environmental clearance and proposed draft environmental impact reports (EIRs):

1.      Shall identify the person or persons who prepared the clearance or proposed draft EIR;  
and

2.      Shall disclose the nature, but not the amount, of any economic interest in the project that will or might be derived from the development or the operation of the project.

B.      To enable compliance with the disclosure obligations under this section, the city shall provide appropriate statement forms.  
(Ord. 24551.)

**Part 2: PROCEDURES**

Sections:

21.04.100	Director.
21.04.110	Director's responsibility.
21.04.120	Fees.
21.04.130	Public notice.

**21.04.100 Director.**

"Director" as used in this title and not otherwise identified shall refer to the director of planning.  
(Ord. 24551.)

**21.04.110 Director's responsibility.**

- A. All projects subject to CEQA shall be submitted for environmental clearance to the director of planning.
- B. The director of planning is responsible for environmental clearance under this title and CEQA.  
(Ord. 24551.)

**21.04.120 Fees.**

The fees charged to defray the city's cost and expense of conducting the proceedings under this title shall be as set forth in the schedule of fees established by resolution of the city council.  
(Ord. 24551.)

**21.04.130 Public notice.**

The CEQA procedures for providing notice shall not preclude the city from providing (1) additional public notice if the city desires, or (2) additional public notice at the same time and in the same manner as public notice required by other laws governing the project.  
(Ord. 24551.)

**Chapter 21.05: CATEGORICAL EXEMPTIONS**

Sections:

21.05.100	Existing facilities.
21.05.110	New construction or conversion of small structures.
21.05.120	Minor alterations to land, water or vegetation.
21.05.130	Enumeration of special activities.

**21.05.100 Existing facilities.**

The following specific activities are added to those activities listed in Section 15301 of the CEQA Guidelines:

- A. The restriping of streets or highways to relieve traffic congestion;
- B. Issuance of sewer lateral repair permits;
- C. Approval of construction, tow-away and no parking signs;
- D. Issuance of permits for curb painting (house numbers);
- E. Issuance of truck unloading permit;
- F. Approval of parking meter hoods;
- G. Issuance of transportation wide load permit;
- H. Issuance of permit for direct line telephone (airport).  
(Ord. 24551.)

**21.05.110 New construction or conversion of small structures.**

The following specific activities are added to those activities listed in Section 15303 of the CEQA Guidelines:

- A. Issuance of sewer lateral permits;
  - B. Issuance of house moving permits pursuant to Chapter 17.36 of Title 17 of this code.
- (Ord. 24551.)

**21.05.120 Minor alterations to land, water or vegetation.**

The following specific activities are added to those activities listed in Section 15304 of the CEQA Guidelines:

- A. The installation, maintenance, repair, restoration, reconditioning, relocation, replacement, removal or demolition of pipeline which is less than one mile in length and within a public right-of-way. "Pipeline" includes only subsurface facilities.
  - B. Issuance of temporary permits for carnivals, amusement rides and petting zoos;
  - C. Issuance of temporary permits for tract sales offices;
  - D. Issuance of temporary permits for temporary storage or construction yards;
  - E. Weed abatement programs.
- (Ord. 24551.)

**21.05.130 Enumeration of special activities.**

The enumeration of certain projects and activities in this title as special activities which are categorically exempt shall not be deemed to be the only activities which may be entitled to such exemption. Where special activities not enumerated herein are found to be adequately described within the general descriptions of the various classes of categorically exempt activities specified in this title, such other special activities may also be found to be categorically exempt.

(Ord. 24551.)

**Chapter 21.06: NEGATIVE DECLARATIONS**

Sections:

- 21.06.010 Consideration and approval of a negative declaration.
- 21.06.020 Protest of findings of a draft negative declaration.
- 21.06.030 Protest hearing procedure.

**21.06.010 Consideration and approval of a negative declaration.**

- A. The director shall consider the draft negative declaration together with any comments received during the public review time period.
- B. The director shall approve the negative declaration if, on the basis of the initial study and any comments received, the director determines that there is no substantial evidence that the project will have a significant effect on the environment. As alternatives to approving the negative declaration, the director may:
  - 1. Require the preparation of an EIR by the project applicant.
  - 2. Require the draft negative declaration to be revised and undergo additional noticed public review.
  - 3. Withdraw the draft negative declaration, if the project is withdrawn by the applicant.
- C. If a written protest is filed with the director within the noticed public review period, the director may:
  - 1. Approve the negative declaration and set a noticed public hearing on the protest before the planning commission.
  - 2. Require the preparation of an EIR by the project applicant and refund the filing fee to the protestant.
  - 3. Require the draft negative declaration to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

4. Withdraw the draft negative declaration, if the project is withdrawn by the applicant, and refund the filing fee to the protestant.
- D. If the director elects to approve the negative declaration and set a noticed public hearing on the protest before the planning commission, the negative declaration shall not become final unless and until the planning commission upholds the action of the director to approve the negative declaration pursuant to Section 21.06.030.  
(Ord. 24551.)

**21.06.020 Protest of findings of a draft negative declaration.**

- A. Prior to approval by the director of a draft negative declaration, any person may file with the director a written protest to the finding in the draft negative declaration that the project will not have a significant effect on the environment. The protest shall be filed on a form prescribed by the director and shall be accompanied by a filing fee as set forth in the schedule of fees established by resolution of the city council. The protest shall specify the reasons which dispute the finding of nonsignificance.
- B. The director shall schedule a hearing before the planning commission, and shall give at least ten days written notice thereof to the protestant, the applicant, and the owners of property contiguous to the project as shown on the latest equalized assessment roll adopted by the County of Santa Clara.
- C. No protest fee need be paid by a planning commissioner if three or more members of the planning commission, acting independently, file timely protests in compliance with this section.  
(Ord. 24551.)

**21.06.030 Protest hearing procedure.**

- A. The planning commission shall hold a public hearing on a protest to a negative declaration to consider all relevant information and materials concerning whether the project may have a significant effect on the environment.
- B. The action of the planning commission in considering the protest is limited to environmental issues.
1. If the planning commission finds that the project may have a significant effect on the environment, the commission shall require the preparation of an EIR in accordance with this title prior to any consideration of whether the project should be approved. In such event, the director shall thereafter refund the filing fee to the protestant.
2. If the planning commission upholds the action of the director, the negative declaration shall become final and no further appeals on the matter may be considered.  
(Ord. 24551.)

**Chapter 21.07: ENVIRONMENTAL IMPACT REPORTS**

Sections:

21.07.010	Final EIR.
21.07.020	Public hearing.
21.07.030	EIR certification.
21.07.040	Appeal of planning commission certification.
21.07.050	Hearing notice - Appeal.
21.07.060	Appeal hearing.
21.07.070	Revision to an EIR after an appeal.

**21.07.010 Final EIR.**

After the director of planning has prepared written responses to public comments on the draft environmental impact report (EIR), the director shall prepare the final EIR.  
(Ords. 24551, 24643.)

**21.07.020 Public hearing.**

- A. The planning commission shall hold a hearing to certify the final EIR as complete and prepared in compliance with CEQA.
- B. The certification hearing may be heard concurrently with the hearing on the project.
- C. The director shall determine the time and place of the public hearing in accordance with the rules and regulations of the planning commission.
- D. Notice of the time and place of the certification hearing shall be published in a newspaper of general circulation in the area affected by the proposed project. The notice shall be published once not less than ten days before the hearing date.
- E. The notice shall briefly describe the nature and location of the project, and shall advise the public that written comments may be submitted to the planning commission, on or before the date set for hearing. (Ords. 24551, 24643.)

**21.07.030 EIR certification.**

- A. Upon conclusion of its certification hearing, the planning commission may find that the final EIR is complete and conforms to the requirements of CEQA.
- B. If the planning commission certifies the final EIR, it may then immediately act or make recommendations on the project associated with the EIR.
- C. No action or recommendation by the planning commission shall be deemed final until the appeal period specified in Section 21.07.040 has expired.
- D. A decision by the commission not to certify a final EIR is not subject to an appeal.
- E. If the planning commission does not certify the EIR, it shall take no action nor make any recommendation with regard to the project.
- F. A final EIR which is revised at the direction of the planning commission shall be noticed in accordance with Section 21.07.020 and reheard in accordance with this section.
- G. If the planning commission is unable to obtain the four votes necessary for any action on the final EIR for two consecutive meetings, the certification hearing shall be scheduled, by the director, before the city council or agency board in accordance with Section 21.07.020, with no further action by the planning commission. (Ords. 24551, 24643, 25564, 25565.)

**21.07.040 Appeal of planning commission certification.**

- A. Any person may file a written appeal of the planning commission's certification of the final EIR with the director, no later than 5:00 p.m. on the third business day following the certification.
- B. The appeal shall be filed on a form prescribed by the director. The appeal shall state with specificity the reasons that the final EIR should be found not to be complete or not to have been prepared in compliance with the requirements of CEQA.
- C. No appeal shall be considered unless it is based on issues which were raised at the public hearing either orally or in writing or in writing prior to the public hearing.
- D. The city council shall conduct appeal hearings when the city is the lead agency.
- E. The board of directors of the redevelopment agency shall conduct appeal hearings when the redevelopment agency is the lead agency. (Ords. 24551, 24643, 25564, 25565.)

**21.07.050 Hearing notice - Appeal.**

- A. Upon receipt of a timely appeal, the director shall schedule a hearing on the appeal of the commission's certification of the final EIR before the city council or the agency board.
- B. At least ten days prior to the appeal hearing, written notice of the hearing shall be placed in the mail to the person filing the appeal, the applicant, and the owners of property contiguous to the project as shown on the latest equalized assessment roll adopted by the County of Santa Clara. (Ords. 24551, 24643, 25564, 25565.)

**21.07.060 Appeal hearing.**

- A. The certification appeal hearing of the city council or agency board shall be de novo.
- B. The city council or agency board may hear the appeal of the certification concurrently with the hearing on the project.
- C. Upon conclusion of the certification appeal hearing, the city council or agency board may find that the final EIR is complete and conforms to the requirements of CEQA.
- D. If the city council or agency board finds the final EIR complete and in conformance with the requirements of CEQA, it shall uphold the commission's certification of the final EIR and it may then immediately act on the project associated with the EIR.
- E. If the city council or agency board finds that the final EIR is not complete or is not in compliance with the requirements of CEQA, the council or board shall require that the EIR be revised and shall not take any action on the project.
- F. All decisions of the council or board shall be final.  
(Ords. 24551, 24643, 25564, 25565.)

**21.07.070 Revision to an EIR after an appeal.**

- A. If the city council or agency board requires a revision of the EIR pursuant to Section 21.07.060, the director shall revise the EIR and prepare a revised final EIR.
- B. A public hearing shall be held by the city council or agency board on the revised final EIR in accordance with Section 21.07.060 and noticed in accordance with Section 21.07.050.
- C. The revised final EIR shall be reviewed by the city council or agency board and may be certified if the council or board finds the revised final EIR is complete and in conformance with the requirements of CEQA in accordance with the provisions of this chapter.
- D. If any other law or title of this code requires an advisory body to forward to the city council or agency board a recommendation on the project associated with the EIR, the revised final EIR shall be forwarded to such advisory body. Any recommendation based on a final EIR prior to its revision shall be disregarded. If a recommendation is not required by any other law or title of this code, the council or board may, in its discretion, act on the project without any recommendation from any advisory body.  
(Ords. 24551, 24643, 25564, 25565.)